

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DERWIN ANDERSON,

Plaintiff,

v.

No. 2:23-cv-101 JHR/KRS

ANDREWS PENA and
KINGSLEY CONSTRUCTORS, INC.

Defendants.

ORDER TO SHOW CAUSE

THIS MATTER comes before the Court *sua sponte*. Plaintiff initiated this action in state court on August 15, 2022, and Defendant Kingsley Constructors, Inc., removed the case to this Court on February 2, 2023, and filed an answer to Plaintiff's Complaint on April 14, 2023. (Docs. 1 and 4). The docket does not reflect that Defendant Pena has been served, and no answer or other responsive pleading has been filed by Defendant Pena. Pursuant to Federal Rule of Civil Procedure 4(m), Plaintiff is required to serve all Defendants within ninety days of filing the complaint. In addition, Rule 41(b) of the Federal Rules of Civil Procedure authorizes the Court to dismiss an action *sua sponte* for failure to prosecute. *See Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003); *see also* D.N.M. LR-Civ. 41.1 ("A civil action may be dismissed if, for a period of ninety (90) calendar days, no steps are taken to move the case forward."). More than ninety days have passed since Plaintiff took any step to move this case forward as to Defendant Pena.

IT IS THEREFORE ORDERED that **on or before May 25, 2023**, Plaintiff must provide the Court with a written explanation showing good cause why this case should not be dismissed as to Defendant Pena for failure to prosecute.



KEVIN R. SWEAZE
UNITED STATES MAGISTRATE JUDGE